July 14, 2004

The Honorable Alfred W. Speer
Clerk of the House of Representatives
State Capitol
Baton Rouge, LA 70804

Re: House Bill No. 885 by Representative Beard
ENVIRONMENT/WATER: Provides for permit requirements for those utilizing reclaimed water and authorizes political subdivisions to enter into structured financing transactions.

Dear Mr. Speer:

House Bill No. 885 was introduced to remove a requirement for a Department of Environmental Quality permit for someone using reclaimed water from a municipal treatment facility for irrigation by spray application. The bill was passed by the House of Representatives without amendments and in the Senate it was reported to the floor without amendments. On the Senate floor, amendments were adopted dealing with waste automobile tires. Thereafter, the House of Representatives refused to concur in the Senate floor amendments and the bill was referred to conference committee. On the final day of the Regular Session the conferees signed the conference committee report, and both chambers adopted the report to strike the Senate floor amendments on waste tires and add new amendments. The new amendments would authorize a municipal corporation, parish, or sewerage, water, or drainage district to enter into a contract by lease or otherwise for up to forty years with any private company for the construction or operation of capital improvements including but not limited to reclaimed water, sewerage, or wastewater treatment facilities or transport or conveyance systems. The amendments further provide that any such private company shall have in its construction and operation of such facilities the same ad valorem and sales tax liability exemption as the local governmental entity with which it contracts.

Briefly, in such transactions, referred to as "structured financing transactions" or "lease-lease back transactions," a public agency leases an asset to a consortium of private investors composed of national or international money fund managers which can sell its interests at any time to other money managers. I am advised that the public agency is likely to be responsible for most or all of the costs of development of documentation, whether or not the transaction is completed, and that such costs tend to be significant and due up front. If the transaction is perfected, the leaseholders or investors receive a very significant federal tax benefit over time and return a significant portion of this benefit back to the public agency up front.

Far more detailed, but similar, authority had been sought by proponents in other legislative instruments earlier in the session without success. Most notably, House Bill No. 1187 was approved by the House but died in Senate committee. That bill contained various safeguards which were not included in the amendments added to House Bill No. 885. House Bill No. 1187 laid out a process, including reasonable definitions for crucial legal terms, in which it is the state treasurer who would

be authorized to enter into such structured financing transitions for state agencies or authorities, with the consent of the participating state agency or authority. More importantly, that bill required, prior to contracting, the submission of a preliminary detailed report explaining the transaction to both the Joint Legislative Committee on the Budget and the State Bond Commission. The approval of both bodies would have been necessary. Additionally, a final report to both bodies would have been required.

Regarding political subdivisions of the state, House Bill No. 1187 would have required the state treasurer to establish similar procedures under which the governing authority of a political subdivision could undertake structured financing agreements in a manner similar to that provided for state agencies. Under both House bills such structured financial transactions would be limited to a maximum of forty years.

Such transactions are complex and expensive legal transactions aimed at exploiting the complexity of the federal tax code and regulations thereunder. I am advised that other states and their political subdivisions do participate in such transactions and they can produce the means for a government to generate significant up front revenue needed to address an otherwise unfunded governmental purpose.

When public agencies consider participating in such transactions, the challenge of protecting the public interests is significant given the inherent risks, which include, as outlined in House Bill No. 1187, the possibility that “upon the occurrence of certain events, the investor may have the right to exercise certain interests which may interfere with or terminate the state's or political subdivision's ownership, occupation, or use of the assets.”

Based on the comments outlined above, I believe it would be more appropriate for the legislature to revisit the matter of state and political subdivisions entering into structured financing transactions taking care to include safeguards at least as protective as those in House Bill No. 1187.

For these reasons, I have vetoed House Bill No. 885 and am returning it to the House of Representatives.

Sincerely,

Kathleen Babineaux Blanco
Governor

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